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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 NATHAN B. NAVE,

8 Petitioner,

9 v.

10 STATE OF WASHINGTON,

11 Respondent.

NO: 2:19-CV-0155-TOR

ORDER SUMMARILY DISMISSING
HABEAS PETITION

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13 Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro*
14 *se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28
15 U.S.C. § 2254. The \$5.00 filing fee has been paid.

16 **PROPER RESPONDENT**

17 An initial defect with the Petition is that it fails to name a proper party as a
18 respondent. The proper respondent in a federal petition seeking habeas corpus relief
19 is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426
20 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the

1 petitioner is incarcerated, the proper respondent is generally the warden of the
2 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d
3 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of
4 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

5 **EXHAUSTION REQUIREMENT**

6 Petitioner challenges his 2018 Spokane County convictions for second degree
7 rape, rape of a child in the third degree, and child molestation in the third degree.
8 He was sentenced to 194 months to life incarceration. Petitioner indicates that he
9 did not file a direct appeal, but notes “IN PROCESS” after checking the “No” box
10 on his petition. ECF No. 1 at 3. Petitioner claims that he has filed no other petitions,
11 applications or motions concerning this judgment of conviction in any state court.
12 ECF No. 1 at 4.

13 In his grounds for relief, Petitioner argues that the State of Washington has no
14 jurisdiction to decide federal constitutional matters. ECF No. 1 at 6-13. It has long
15 been settled that state courts are competent to decide questions arising under the U.S.
16 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the
17 state court, as much as it is that of the federal courts, when the question of the validity
18 of a state statute is necessarily involved, as being in alleged violation of any
19 provision of the federal constitution, to decide that question, and to hold the law void
20 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805

1 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal
2 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments
3 to the contrary lack merit.

4 Additionally, before a federal court may grant habeas relief to a state prisoner,
5 the prisoner must exhaust the state court remedies available to him. 28 U.S.C. §
6 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
7 a prisoner give the state courts an opportunity to act on his claims before he presents
8 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
9 petitioner has not exhausted a claim for relief so long as the petitioner has a right
10 under state law to raise the claim by available procedure. *See id.*; 28 U.S.C. §
11 2254(c).

12 To meet the exhaustion requirement, the petitioner must have “fairly
13 present[ed] his claim in each appropriate state court (including a state supreme court
14 with powers of discretionary review), thereby alerting that court to the federal nature
15 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,
16 365–66 (1995). A petitioner fairly presents a claim to the state court by describing
17 the factual or legal bases for that claim and by alerting the state court “to the fact
18 that the . . . [petitioner is] asserting claims under the United States Constitution.”
19 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th

1 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim
2 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

3 Furthermore, to fairly present a claim, the petitioner “must give the state
4 courts one full opportunity to resolve any constitutional issues by invoking one
5 complete round of the State’s established appellate review process.” *O’Sullivan*,
6 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
7 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
8 (1971). It does not appear from the face of the Petition or the attached documents
9 that Petitioner has exhausted his state court remedies as to each of his grounds for
10 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state
11 court remedies.

12 **GROUND FOR FEDERAL HABEAS RELIEF**

13 Petitioner asserts that the Washington state constitution contradicts the federal
14 constitution regarding the Fifth Amendment right to “presentment or indictment of
15 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering
16 his arrest, conviction and imprisonment illegal.

17 Petitioner seems to argue that because the state courts have defied “federally
18 established procedures and processes for the adjudication of crimes” only “a court
19 of federal jurisdiction” has jurisdictional authority over his claims. His bald
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1 assertion that “due process of the law was ignored” is unsupported by his factual
2 allegations.


3 The United States Supreme Court stated long ago: “Prosecution by
4 information instead of by indictment is provided for by the laws of Washington.
5 This is not a violation of the Federal Constitution.” *See Gaines v. State of*
6 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the
7 contrary presented in his four grounds for federal habeas relief are legally frivolous.

8 Because it plainly appears from the petition and the attached exhibits that
9 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF
10 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in
11 the United States District Courts.

12 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
13 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
14 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
15 taken in good faith, and there is no basis upon which to issue a certificate of
16 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
17 appealability is therefore **DENIED**.

18 **DATED** May 14, 2019.




THOMAS O. RICE
Chief United States District Judge